

E-FILED 4/30/2008

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES *ex rel.* DONNA M.
McLEAN and THE STATE OF CALIFORNIA
ex rel DONNA M. McLEAN,

Plaintiffs,

v.

THE COUNTY OF SANTA CLARA, et al.,

Defendants.

No. C05-01962 HRL

**ORDER GRANTING IN PART AND
DENYING IN PART RELATOR'S
MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND ANSWERS TO
INTERROGATORIES**

[Re: Docket No. 126]

Relator Donna M. McLean moves to compel defendant County of Santa Clara ("County") to produce documents and to answer interrogatories. The County opposes the motion. Upon consideration of the moving and responding papers, as well as the arguments presented at the April 22, 2008 hearing, this court grants the motion in part and denies it in part.

On February 13, 2008, McLean advised that she had a falling out with her second attorney, Michael Millen, and filed a motion to allow him to withdraw as her counsel of record and to permit her to proceed pro se until she found a new attorney.. The next day, on February 14, 2008, attorney William Dresser substituted into the case as McLean's counsel. On February 26, 2008, this court issued an order granting McLean's request to permit Millen's withdrawal. It noted that relators cannot proceed pro se on behalf of the government in qui tam actions. Nevertheless, because McLean apparently had already retained Dresser, Millen was permitted

1 to withdraw.

2 At issue in the instant discovery motion are several requests for documents and
3 interrogatories which were signed by Dresser and served by hand on the County on February
4 13, 2008 – i.e., the last day to timely serve written discovery requests by hand before the March
5 14, 2008 close of fact discovery.¹ Pursuant to Fed. R. Civ. P. 26(g), the County contends that it
6 was not obliged to respond to these requests because (a) as of February 13, 2008, Dresser had
7 not yet substituted into the case and (b) Millen’s withdrawal from the case was not effective
8 until the court issued its February 26, 2008 order permitting withdrawal.² Although Dresser
9 subsequently re-served the requests on February 26, 2008 (signed by both him and McLean),
10 the County points out that this was well after the deadline for timely service of written
11 discovery requests. In any event, the County argues that the requests are duplicative of
12 McLean’s prior discovery requests as well as her requests made pursuant to the Freedom of
13 Information Act (FOIA) and the California Public Records Act.

14 Rule 26(g)(1) of the Federal Rules of Civil Procedure provides that all document
15 requests “must be signed by at least one attorney of record in the attorney’s own name – or by
16 the party personally, if unrepresented . . .” “Other parties have no duty to act on an unsigned
17 disclosure, request, response, or objection until it is signed, and the court *must* strike it unless a
18 signature is promptly supplied after the omission is called to the attorney’s or party’s attention.”
19 FED.R.CIV.P. 26(g)(2) (emphasis added). The County was justified in its reliance on Fed. R.
20 Civ. P. 26(g), and McLean has not explained why she could not have served the requests in
21 question sooner. However, because there was no one who properly could have served the
22 requests in question on February 13, 2008, and in the interests of substantial justice, this court
23 declines to deny McLean’s motion on this ground.

24
25 ¹ This is the second deadline for fact discovery set by the court. The original
26 May 18, 2007 deadline was re-set (along with all other case management dates and trial)
when McLean’s attorney-client relationship with her first lawyer broke down.

27 ² Under the court’s Civil Local Rules, “[c]ounsel may not withdraw from an
28 action until relieved by order of Court after written notice has been given reasonably in
advance to the client and to all other parties who have appeared in the case.” CIV. L.R. 11-
5(a).

1 Nevertheless, McLean's motion is denied as to Request Nos. 23 and 24. These requests
2 are virtually identical to her FOIA and California Public Records Act requests. Even if they
3 were not, the court finds them to be so broad as to be unreasonable.

4 The motion is otherwise granted as to Request Nos. 25-32. Based on the record
5 presented, the court cannot conclude that these requests are clearly duplicative of McLean's
6 earlier discovery requests. The County shall respond to these requests and produce responsive
7 documents **no later than May 16, 2008**. However, the County shall not be obliged to re-
8 produce documents that it may have already produced in response to McLean's earlier
9 discovery requests or in response to her FOIA and California Public Records Act requests.

10 McLean's motion is also granted as to Interrogatory Nos. 14-19. Although there appears
11 to be some overlap, based on the record presented, the court cannot conclude that these
12 interrogatories are clearly duplicative of McLean's prior requests. The County shall serve its
13 answers to these interrogatories no later than **May 16, 2008**.

14 IT IS SO ORDERED.

15 Dated: April 30, 2008



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

5:05-cv-1962 Notice will be electronically mailed to:

Virginia Stewart Alspaugh Virginia_Alspaugh@cmwlaw.net, Linda_Knobbe@cmwlaw.net,
TheAlspaughs@cox.net

Orley Brandt Caudill , Jr brandt_caudill@cmwlaw.net, christopher_zopatti@cmwlaw.net

William C. Dresser loofwcd@aol.com

Melissa R. Kiniyalocts melissa.kiniyalocts@cco.co.scl.ca.us

Sara McLean sara.mclean@usdoj.gov

Michael Millen MikeMillen@aol.com

Richard Augustus Swenson rsloofwcd@aol.com

Joan Eve Trimble joan_trimble@cmwlaw.net, patricia_inabnet@cmwlaw.net

Sara Winslow sara.winslow@usdoj.gov, kathy.terry@usdoj.gov

Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.

5:05-cv-1962 Notice will be delivered by other means to:

Julia Clayton
Deputy Attorney General
California Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004